

PUBLIC LAW BOARD NO. 2444

Award No. 58

Case No. 72

Docket No. MW-81-10

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
(Texas and Louisiana Lines)

Statement

of Claim: Claim BMWE and Track Laborer D. J. Boudreaux for payment of 44 hours at track laborer's respective pro rata rate, alleging not being afforded noon meal period commencing July 1, 1980 through and including November 5, 1980.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 19, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Organization, under date of November 12, 1980, filed the following claim:

"We are filing a claim in behalf of Track Laborer D. J. Boudreaux assigned to Lafayette Division, Shriever District, Extra Gang 121, (Surfacing Gang) for 44 hours at track laborer's respective pro rata rate. Due to Mr. D. J. Boudreaux not being afforded a noon meal, commencing July 1, 1980 through and including November 5, 1980. (Copy of day's work and not afforded a noon meal.)

Extra Gang 121's regular assigned working hours are from 6 AM to 2:30 PM with one-half hour for lunch, however, Extra Gang 121 is not being afforded a lunch period within a specific time, nor are they being afforded one-half hour for lunch as is prescribed by the controlling agreement, instead Extra Gang 121 works through the specified lunch period and are sometimes allowed ten or fifteen minutes in which to eat.

It is our position that this practice is in direct violation of especially but not limited to Article 16, Section 5(a) and Article 16, Section 6 of the controlling agreement."

Carrier denied the claim on the basis:

"That claimant was allowed a meal period on each date in question in accordance with the agreed rules. Therefore, there is no basis for claim. This is also supported by written statement from R. A. Jackson, District Manager at Shriever, LA."

Carrier also avers that the claim was in violation of Article 15, Section 1 (a) (Time Limit on Claims). Further, that on the merits, that Claimant was allowed a meal period on each date, that neither Claimant nor the Organization had shown that permission was given for Claimant to work through his meal period or, in the alternative, that Claimant was required to do so. Awards in support of its position were offered.


The Board finds that the instant claim is not a single but rather a continuing claim. Therefore, all of the claims dated prior to September 12th are barred under Article 15, Section 1 (a) and are therefor dismissed.

The proof offered by both parties reflect that Claimant worked overtime on each date of claim. Employee's Exhibit 1 and Carrier's Exhibit A so support. Also, Carrier's Exhibit C, i.e., copies of the time roll show that Claimant had been compensated for working in excess of his regular assigned working hours. No record was shown that he claimed penalty pay perhaps because there appears to be no such provision therefor. Article 16, Section 5 (a), and Section 6 thereof appears to provide a basis for a claim. However, in the absence thereof, the Board must conclude that the evidentiary burden required of Claimant and/or the Organization was not carried. While there are allegations offered, the evidence in support thereof were not offered. Consequently, the proof of support offered being insufficient to provide support, the instant claims must be denied.

A denial of the instant claims should not mislead Carrier.  
Hopefully the existence of the claims may serve as a warning if there  
be a basis of fact in the allegations.

In the circumstances, these claims are denied.

Award: Claims denied.

  
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M. A. Christie, Employee Member

  
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C. B. Goyne, Carrier Member

  
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Arthur T. Van Wart, Chairman  
and Neutral Member

Issued May 11, 1983.